THE "UNION HODEIDAH"

AHMED ABDUL QAWI BAMAODAH v. THE "UNION HODEIDAH" (OWNERS OF)

[O.C.J. (Thean J.) January 10, 1987]

[Singapore – Admiralty Suit No. 872 of 1980]

Practice and Procedure – Admiralty – Action time-barred – Renewal of writ – Whether there were exceptional circumstances for renewal.

Shipping Law – Admiralty practice – Failure to serve writ within one year – Renewal of Writ – Whether warranted by exceptional circumstances.

The plaintiff on December 30, 1980 took out a writ of summons *in rem* against the defendants and claimed damages for breach of contract and/or breach of duty and/or negligence on the part of the defendants, their servants or agents resulting in loss or damage to the plaintiff's goods and/or short delivery of the said goods which were shipped on board the defendant's vessel "Union Hodeidah" ("the Vessel") for carriage from Singapore to Jeddah.

At the time of the issue of the writ, the Vessel was not in port. The writ was not served within 1 year from the date of its issue; but prior to its expiry, the plaintiff applied for and obtained a renewal of the writ.

On or about April 16, 1982 the Vessel was at the port of Singapore and service of the renewed writ was effected and the Vessel was arrested. The defendants entered a conditional appearance on April 29, 1982 and on May 10, 1982 applied by Notice of Motion to set aside the writ, service thereof, and the warrant of arrest.

The question before the court was whether the court should have exercised its discretion to renew the writ, as it did, as a result of which the defendants were deprived of a good defence to the claim.

Held, allowing the Motion: the plaintiff had not established any exceptional circumstances warranting a renewal of the writ.

[*Editorial Note:* This case is different from earlier reported cases of this kind in that here local "professional ship-watchers" were engaged on behalf of the plaintiffs. Allegations of breakdown of the Port of Singapore Authority computerised system of ships reporting were raised.]

Case referred to:

(1) *The "Big Beacher"* [1984] 2 M.L.J. 4.

ADMIRALTY IN REM.

Yang Lih Shyng for the plaintiff.
Lawrence Boo for the defendants.

Cur. Adv. Vult.

Thean J.: The plaintiff on December 30, 1980, took out a writ of summons *in rem* against the defendants and claimed damages for breach of contract and/or breach of duty and/or negligence on the part of the defendants, their servants or agents resulting in loss or damage to the plaintiff's goods and/or short delivery of the said goods which were shipped on board the defendants' vessel "Union Hodeidah" ("the Vessel") for carriage from Singapore to Jeddah in the months of December 1979 and January 1980. At the time of the issue of the writ, the Vessel was not in port and the writ was taken out obviously to prevent the plaintiff's claim from being time-barred. The writ was not served within 1 year from the date of its issue; but prior to its expiry, the plaintiff applied for it to be renewed and an order was made on January 22, 1982, for renewal thereof for a period of 12 months with effect from December 30, 1981.

On or about April 16, 1982, the Vessel was at the port of Singapore and service of the renewed writ was effected and the Vessel was arrested. The defendants entered a conditional appearance on April 29, 1982, and on May 10, 1982 applied by Notice of Motion to set aside the writ, the service thereof and the warrant of arrest. The Motion ultimately came on for hearing. At the conclusion of the hearing, I allowed the Motion: set aside the writ, the service thereof and the warrant of arrest and ordered the plaintiff to pay the costs of and incidental to the application on the basis as agreed.

The arguments of counsel had proceeded on the basis that at the time of the application for renewal of the writ, the cause of action to which the writ related had become time-barred and the question was whether the Court should have exercised its discretion to renew the writ, as it did, as a result of which the defendants were deprived of a good defence to the claim. The principle relating to a renewal of a writ where the cause of the action has been time-barred is well settled and I can do no better than quote the following passage from the judgment of the Court of Appeal in *The "Big Beacher"*[1] at p. 5:

> "The principle governing the renewal of a Writ has been firmly settled by the decision in *Heaven* v. *Road and Rail Wagons Limited* (1965) 2 Q.B. 35. It is this. Where an application to renew a Writ is made after the expiry of the relevant period of limitation, the court should not exercise its discretion in favour of renewing the Writ, the effect of which would be to deprive the defendants of an otherwise good defence to the claim, unless there were exceptional circumstances which amount to a good and sufficient cause for renewing the Writ. Such circumstances, as a guide, were ably set out by Brandon J. (as he then was) in *The Berny* (1977) 2 L1. R. 533."

Hence the only issue before me was whether there were exceptional circumstances which amounted to a good and sufficient cause for renewing the writ.

After the issue of the writ, the plaintiff through his solicitors, M/s. Rodyk & Davidson, engaged Singapore Adjusters and Surveyors Company (Pte.) Ltd. ("SAS"), who presumably are, *inter alia*, professional ship watchers, to watch out for the Vessel calling at Singapore and to notify the plaintiff's solicitors accordingly. In his affidavit affirmed on December 4, 1981, in support of the application for renewal of the writ, Mr. P. Selvadurai deposed to the fact that on October 6, 1981, at about 3.25 p.m. his shipping clerk was informed by SAS on the telephone that the Vessel was in port and would be departing on the same night, and that due to the late information and the short stay in Singapore his firm was unable to make arrangement for service of the writ on the Vessel. Since that time he had not been informed by SAS of the Vessel's return to Singapore. On the basis of that affidavit the writ was renewed.

The cause for the renewal of the writ was challenged by the defendants. In his affidavit affirmed on May 21, 1982, and filed in support of the Motion, Cho Chu Heng, the Managing Director of Strongwill Enterprise (Pte) Ltd, the agents of the defendants, deposed to the fact that during that initial period of 12 months since the issue of the writ the Vessel had called at Singapore on no less than 6 occasions, namely:

(i)	*Voy. 8E*			
	Arrived:	0230 hours	5-4-81	(Sunday)
	Departed:	1520 hours	5-4-81	(Sunday)
(ii)	*Voy. 9W*			
	Arrived:	0030 hours	19-5-81	(Tuesday)
	Departed:	1140 hours	21-5-81	(Thursday)
(iii)	*Voy. 8W*			
	Arrived:	2130 hours	30-6-81	(Tuesday)
	Departed:	2035 hours	2-7-81	(Thursday)
(iv)	*Voy. 10W*			
	Arrived:	1700 hours	18-8-81	(Tuesday)
	Departed:	0400 hours	19-8-81	(Wednesday)
(v)	*Voy. 11*			
	Arrived:	1230 hours	5-10-81	(Monday)
	Departed:	2300 hours	6-10-81	(Tuesday)
(vi)	*Voy. 11W*			
	Arrived:	0240 hours	21-11-81	(Saturday)
	Departed:	1740 hours	22-11-81	(Sunday)

Mr. Boo on behalf of the defendants submitted that on at least 4 of such occasions the plaintiff could have effected service of the writ on the Vessel had the plaintiff taken reasonable steps to do so. That the plaintiff had failed to do, and the writ ought not to have been renewed.

The plaintiff did not really dispute that the Vessel had called at Singapore on the 6 occasions. Mr. Yang for the plaintiff in his arguments appeared to have accepted the fact that the Vessel was here on those occasions but contended that the periods in which the Vessel was here were in each case too short for the writ to be served on her.

In his affidavit affirmed on July 15, 1982, Yip Kok Chong, the general manager of SAS, said that his company maintained a watch on the Vessel since January 31, 1981, and such service was performed by, *inter alia*, the company obtaining from the Port of Singapore Authority ("PSA") once a day at about 11.00 a.m. a shipping list of vessels arriving at and departing from the port; such list would include names of all vessels which:

(a) had arrived since 0010 hours that day;

(b) were expected to arrive before 2359 hours that day;

(c) had departed since 0001 hours that day;

(d) were expected to depart before 2359 hours that day.

Mr. Yip also did not really dispute that the Vessel had called at Singapore on the 6 occasions. He explained, however, why the writ could not be served on the Vessel. The first occasion was on a Sunday and of course nothing could be done. In respect of the second occasion his company received the shipping list from PSA at 4.00 p.m. on May 21, 1981, after the Vessel had departed, and Mr. Yip said that the belated issue of the shipping list was due to a computer breakdown in PSA. As for the third occasion, the shipping list was released only on the afternoon of July 2, 1981; the delay in the issue of the list was again due to the computer breakdown in PSA. On the fourth occasion, his company received the shipping list only on August 20, 1981; the delay again was attributed to the computer breakdown in PSA. As regards the fifth occasion, he said his company received the "Arrival List" from PSA only in the afternoon of October 7, 1981. No explanation, however, was given as to why his company received the list so late – whether it was due to any delay on the part of PSA or any delay on the part of SAS staff. In res-

pect of the sixth occasion, it was of course not possible for anything to be done to effect service of the writ.

M/s. Rodyk & Davidson had referred to PSA the occasions of computer breakdown mentioned by Mr. Yip and PSA had confirmed that "there were computer shutdowns for short periods of time on the dates in question except October 6 1981." However, PSA explained that "the downtime was insignificant and did not in any way affect the Port Master's computer operations insofar as it concerned the issue of the list of vessels arriving and departing." Such information from PSA, at its lowest, cast serious doubts on the explanation given by Mr. Yip about the cause of the delay in the issue of the shipping lists by PSA.

Quite apart from what was said by PSA, I find the explanation given by Mr. Yip in his affidavit unsatisfactory. It did not appear from his affidavit that SAS was aware of the occasions (other than the fifth occasion) on which the Vessel called. If SAS was aware of these occasions, it did not appear that it had informed M/s. Rodyk & Davidson of the same. In his affidavit affirmed on December 4, 1981 in support of the application for renewal, Mr. P. Selvadurai mentioned only the fifth occasion on which the Vessel called at Singapore. In respect of the second occasion, the Vessel was here for about 2 full working days – 0030 hours on May 19 to 1140 hours on May 21, 1981. Mr. Yip did not explain whether his company received the shipping lists on May 19 and May 20, 1981, and if it did not receive them whether that was due to a computer breakdown in PSA on those days. If the shipping lists were not issued by PSA on those 2 days because of a computer breakdown and the issue of the shipping list on May 21, 1981 was delayed to about 4 p.m. by a computer breakdown (as alleged by Mr. Yip) then such a breakdown or breakdowns must truly be very major – a fact refuted by PSA. Further, in respect of the third and the fifth occasions, no information was given by Mr. Yip or anyone else as to whether the shipping lists issued by PSA on June 30, 1981, and October 5, 1981, respectively contained any information that the Vessel was expected to arrive in Singapore on those days.

In my view the plaintiff had not established any exceptional circumstance warranting a renewal of the writ. On the material before me I am not satisfied that during the second, third and fifth occasions on which the Vessel was here, though she was here for a short time on each such occasion, the plaintiff did not have an opportunity of serving the writ on her, if the matter of service of the writ had been pursued with reasonable diligence and reasonable steps had been taken. I therefore held that the defendants' application succeeded.

Order accordingly.

Solicitors: *Rodyk & Davidson; Emmanuel & Barker.*

VASUDEVAN v. ICAB PTE. LTD.

[O.C.J. (Chan Sek Keong J.C.) February 16, 1987]

[Singapore – Originating Summons No. 953 of 1986]

Company Law – Winding up – Duties of liquidator – Statutory and professional duties – Failure of liquidator to discharge statutory duty – Liquidator to pay costs – Companies Act (Cap. 185, Reprint), ss. 264, 307, 308(6) & 343(1).

Practice and Procedure – Costs – Winding Up of company – Application for deferment of dissolution of – Failure of liquidator to discharge statutory duty – Liquidator to pay costs – Companies Act (Cap. 185, Reprint), s. 264.

Company Law – Liquidator's statutory and professional duties.

On November 8, 1982 the plaintiff herein commenced an action in Suit No. 4851/82 against the defendants claiming damages at common law for injuries suffered. The said action was set down for trial on October 2, 1983. Sometime in November 1985, the solicitors for the defendants informed the solicitors for the plaintiff that the defendants had been wound up.

On August 5, 1986 the plaintiff filed this originating summons for an order that he be granted leave to continue proceedings against the company. On September 1, 1986 the plaintiff made an application by way of summons-in-chambers in this originating summons for an order under section 308(6) of the Companies Act (Reprint) that the dissolution of the defendants be deferred until after determination of the action in Suit No. 4851/82.

Thereafter on October 1, 1986, the plaintiff made another application by way of summons-in-chambers under section 307 of the Companies Act to have the dissolution declared void. All three applications came before the present court which declared, *inter alia*, the dissolution void and allowed the plaintiff to continue proceedings against the company.

The plaintiff's case was that he was entitled to the costs of the application to declare the dissolution void. The